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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2009 - 84

13 ANDREA LEE PENCE
523 Teesdale Road
14 Yuba City, CA 95991

A C C U S A T I O N

15 Registered Nurse License No. 594272

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
22 ("Board"), Department of Consumer Affairs.

23 2. On or about February 4, 2002, the Board issued Registered Nurse License
24 Number 594272 to Andrea Lee Pence ("Respondent"). Respondent's registered nurse license
25 expired on March 31, 2007.

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1 (c) Be convicted of a criminal offense involving the prescription,
2 consumption, or self-administration of any of the substances described in
3 subdivisions (a) and (b) of this section, or the possession of, or falsification of
a record pertaining to, the substances described in subdivision (a) of this section,
in which event the record of the conviction is conclusive evidence thereof . . .

4 7. Code section 2765 states:

5 A plea or verdict of guilty or a conviction following a plea of nolo
6 contendere made to a charge substantially related to the qualifications, functions
7 and duties of a registered nurse is deemed to be a conviction within the meaning
8 of this article. The board may order the license or certificate suspended or revoked,
9 or may decline to issue a license or certificate, when the time for appeal has elapsed,
10 or the judgment of conviction has been affirmed on appeal or when an order
granting probation is made suspending the imposition of sentence, irrespective of
a subsequent order under the provisions of Section 1203.4 of the Penal Code
allowing such person to withdraw his or her plea of guilty and to enter a plea of
not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
information or indictment.

11 8. Code section 2770.11 states:

12 (a) Each registered nurse who requests participation in a diversion
13 program shall agree to cooperate with the rehabilitation program designed by a
14 committee. Any failure to comply with the provisions of a rehabilitation program
15 may result in termination of the registered nurse's participation in a program. The
name and license number of a registered nurse who is terminated for any reason,
other than successful completion, shall be reported to the board's enforcement
program.

16 (b) If a committee determines that a registered nurse, who is denied
17 admission into the program or terminated from the program, presents a threat to
18 the public or his or her own health and safety, the committee shall report the name
19 and license number, along with a copy of all diversion records for that registered
nurse, to the board's enforcement program. The board may use any of the records
it receives under this subdivision in any disciplinary proceeding.

20 9. Code section 4060 states, in pertinent part:

21 No person shall possess any controlled substance, except that furnished to
22 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
23 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
24 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or
a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
25 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
This section shall not apply to the possession of any controlled substance by a
26 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
27 practitioner, or physician assistant, when in stock in containers correctly
labeled with the name and address of the supplier or producer . . .

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10. Health and Safety Code section 11170 states that no person shall prescribe, administer, or furnish a controlled substance for himself.

11. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that “[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . .”

COST RECOVERY

12. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCES AT ISSUE

13. "Duragesic" is a transdermal system which provides continuous systemic delivery of Fentanyl for 72 hours. Fentanyl is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (c)(8).

14. “Oxycontin” is a trade name for controlled release oxycodone. Oxycodone is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(N).

15. “Vicodin”, a combination drug containing 5 mg hydrocodone bitartrate, also known as dihydrocodeinone, and 500 mg acetaminophen per tablet, is a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4).

RESPONDENT'S TERMINATION FROM BOARD'S

DIVERSION PROGRAM AS A PUBLIC SAFETY RISK

16. On or about October 5, 2006, Respondent was enrolled in the Board's Diversion Program. On or about January 19, 2007, the Diversion Evaluation Committee ("DEC") terminated Respondent from the Diversion Program as a public safety risk. The DEC found that Respondent was not compliant in any portion of her contract, that Respondent admitted lying to the DEC that she attended IOP (Intensive Outpatient Treatment Program)

1 when, in fact, she had not, that there was no evidence of recovery observed or verified sobriety,
2 and that Respondent had an extensive history of polysubstance abuse of legal and illegal drugs.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Criminal Conviction)**

5 17. Respondent is subject to disciplinary action pursuant to Code section
6 2761, subdivision (f), in that on or about April 11, 2007, in the criminal proceeding titled *People*
7 *v. Andrea Lee Pence* (Super. Ct. Sutter County, 2007, Case No. CRF-07-0324), Respondent pled
8 guilty to violating Health and Safety Code section 11173, subdivision (a) (diversion of controlled
9 substances, a felony), and Penal Code section 484 (theft, a misdemeanor), crimes substantially
10 related to the qualifications, functions, and duties of a registered nurse. The circumstances of the
11 crimes are set forth in subparagraph 18 (a) below.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Diversion, Possession, and Self-Administration of Controlled Substances)**

14 18. Respondent is subject to disciplinary action pursuant to Code section
15 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
16 2762, subdivision (a), in that in and between 2003, and September 2006, while licensed as a
17 registered nurse, Respondent did the following:

18 **Diversion of Controlled Substances:**

19 a. In and between July 2006, and September 2006, while on duty as the day
20 shift nursing supervisor at The Fountains, a skilled nursing facility located in Yuba City,
21 California, Respondent obtained the controlled substance Fentanyl by fraud, deceit,
22 misrepresentation, or subterfuge, in violation of Health and Safety Code section 11173,
23 subdivision (a), as follows: Respondent removed duragesic patches containing Fentanyl from
24 several patients for her own personal use. Respondent usually targeted patients who were
25 confused, and told the patients that the duragesic patch was not placed on them properly and
26 needed to be replaced. Respondent took the patch into the restroom, bit or cut open the corner of
27 the patch, squeezed the Fentanyl out onto a piece of plastic, such as a "baggie", taped the plastic
28 to her torso around her stomach area, then later replaced the patch on the patient.

1 **Possession of Controlled Substances:**

2 b. In and between July 2006, and September 2006, Respondent possessed
3 unknown quantities of the controlled substance Fentanyl without a valid prescription from a
4 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, in violation of
5 Code section 4060.

6 **Self-Administration of Controlled Substances:**

7 c. In and between July 2006, and September 2006, Respondent self-
8 administered the controlled substance Fentanyl, as set forth in subparagraph 18 (a) above,
9 without lawful authority therefor. Further, in or about 2004, Respondent self-administered
10 unknown quantities of Oxycontin without lawful authority therefor, as set forth in paragraph 19
11 below.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Use of Controlled Substances to an Extent or in a Manner**

14 **Dangerous or Injurious to Oneself or Others)**

15 19. Respondent is subject to disciplinary action pursuant to Code section
16 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
17 2762, subdivision (b), in that while licensed as a registered nurse, Respondent used the controlled
18 substances Vicodin, Oxycontin, and Fentanyl to an extent or in a manner dangerous or injurious
19 to herself and/or others, as follows: In or about 2002, Respondent developed pain in the right
20 side of her neck and arm and was prescribed Vicodin. In or about 2003, Respondent began
21 abusing pain medications, including Vicodin. In approximately 2004, Respondent began buying
22 Oxycontin from a 19 year old male, who died from a drug overdose in July 2004. Respondent
23 used Oxycontin through late 2004. In and between July 2006, and September 2006, Respondent
24 began using Fentanyl which she removed from duragesic patches, as set forth in subparagraph 18
25 (a) above.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Conviction Related to the Prescription, Self-Administration,**
3 **or Possession of Controlled Substances)**

4 20. Respondent is subject to disciplinary action pursuant to Code section
5 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
6 2762, subdivision (c), in that on or about April 11, 2007, Respondent was convicted of a criminal
7 offense involving the prescription, self-administration, or possession of controlled substances, as
8 set forth in paragraph 17 above.

9 **PRAYER**

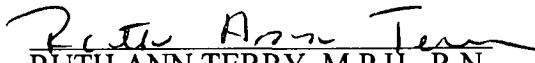
10 WHEREFORE, Complainant requests that a hearing be held on the matters herein
11 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

12 1. Revoking or suspending Registered Nurse License Number 594272, issued
13 to Andrea Lee Pence;

14 2. Ordering Andrea Lee Pence to pay the Board of Registered Nursing the
15 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
16 Professions Code section 125.3;

17 3. Taking such other and further action as deemed necessary and proper.

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19 DATED: 10/8/08.

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21 
RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California

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24 Complainant